

ENTERED

August 10, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

JIMMIE RAY HAIRELL, JR., §
§
Plaintiff, §
VS. § CIVIL ACTION NO. 6:20-CV-21
§
COMMISSIONER OF SOCIAL SECURITY, §
§
Defendant. §
§

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Plaintiff Jimmie Ray Hairell, Jr. (“Plaintiff”) filed this action pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3) seeking judicial review of the Commissioner of Social Security’s denial of his applications for benefits. (D.E. 1). Plaintiff argues that the Administrative Law Judge’s (“ALJ”) final determination of his claim is unsupported by substantial evidence. (D.E. 17). Specifically, he claims that (1) the ALJ’s residual functional capacity (“RFC”) determination is unsupported by substantial evidence because she failed to properly weigh the opinion of Dr. Susan Frensley, and (2) the ALJ’s physical RFC determination is not supported by substantial evidence because she relied upon the stale opinions of non-examining State agency consultants. *Id.* at 1.

Before the Court is Magistrate Judge Jason Libby’s Memorandum and Recommendation (“M&R”). (D.E. 20). Judicial review of the Commissioner’s decision regarding a claimant’s entitlement to benefits is limited to two questions: (1) whether substantial evidence supports the Commissioner’s decision; and (2) whether the decision comports with relevant legal standards. *Carey v. Apfel*, 230 F.3d 131, 135 (5th Cir. 2000); *see also* (D.E. 20, p. 2). The M&R scrutinizes the record and finds that substantial evidence exists

to support the ALJ's decision that Plaintiff can perform light work with restrictions and that the ALJ weighed the evidence within her discretion. (D.E. 20). Thus, because the ALJ properly supported her decision with substantial evidence and applied the relevant legal standard, Judge Libby recommends that Plaintiff's Motion for Summary Judgment be denied (D.E. 16), the Commissioner's Motion for Summary Judgment be granted (D.E. 19), the Commissioner's determination be affirmed, and this case be dismissed with prejudice. (D.E. 20).

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(B); General Order No. 2002-13. Plaintiff timely filed objections to the M&R. (D.E. 21). Having carefully reviewed the proposed findings and conclusions of the M&R, the record, the applicable law, and having made a de novo review of the portions of the M&R to which Plaintiff's objections were directed, 28 U.S.C. § 636(b)(1), the Court **OVERRULES** Plaintiff's objections. (D.E. 21). Accordingly, the Court:

- (1) **ADOPTS** the M&R in its entirety. (D.E. 20).
- (2) **GRANTS** the Commissioner's Motion for Summary Judgment. (D.E. 19).
- (3) **DENIES** the Plaintiff's Motion for Summary Judgment. (D.E. 16).
- (4) **DISMISSES** this case with prejudice.

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas
August 10, 2021